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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**In Re: Patent Application of Charles A. Eldering et al.**

Conf. No.: 9699 : Group Art Unit: 3622  
Appln. No.: 09/857,160 : Examiner: Alvarez, Raquel  
Filing Date: 01 JULY 2001 : Attorney Docket No.: T705-13  
Title: Subscriber Identification System

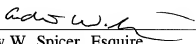
**Request for Pre-Appeal Brief Conference**

Applicant(s) request(s) review of the final rejection in the above-identified application, under the Pre-Appeal Brief Conference Program published on July 12, 2005. No amendments are being filed with this request.

- ☒ The review is requested for the reason(s) stated on the attached sheet(s).
- ☒ Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences is filed herewith.

Date: \_\_\_\_\_

3/12/08

  
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## **STATEMENT IN SUPPORT OF REQUEST FOR PRE-APPEAL BRIEF CONFERENCE**

Presently, claims 1-4 and 15-23 are pending in the application. This paper is being filed in support of the Request for Pre-Appeal Brief Conference submitted herewith. Details of the Examiner's rejections may be found in the Final Office Action dated October 12, 2007 ("Final Action") and the Examiner's Non-Final Office Action dated May 1, 2007 ("Non-Final Action"). Discussion of the prior art reference and the pending claims may be found in Applicants' Amendment filed August 7, 2007 ("Amendment"), which is incorporated herein by reference.

### ***§103 (a) Rejection***

The Examiner continues to reject all claims under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,977,964 to Williams *et al.* ("Williams") in view of Official Notice.

The Examiner's reasons for this rejection may be found at pages 2 – 5 of the Final Rejection. Applicants' arguments with respect to the Examiner's previous §102(a) rejection over Williams are summarized at page 11 – 13 of Applicants' Amendment.

When making a rejection under 35 U.S.C. § 103, the prior art references, when combined, must teach or suggest all of the claim limitations. *See* MPEP 2143.03.

### ***Patentability Over Williams***

At page 5 – 6 of the Final Action, the Examiner contends that Williams clusters programs into genres and that such clustering is the same as "clustering viewing sessions," as recited in independent claim 1. The Examiner relies on Fig. 8 of Williams for the premise that Williams groups the programs based on genre, and, as such, clusters programs. There are several fallacies in this argument, however.

First, Fig. 8 of Williams depicts an example of a user profile or preference database that Williams' system calls on to obtain the profile of previously known viewers. Williams then uses

these profiles to identify which user is presently using the system. As can be seen in Fig. 8 of Williams, the user profile database 800, does not contain information related to clustered viewing sessions, but rather merely contains a set of preferences related to a particular user. Thus, Fig. 8 is not a cluster of viewing sessions (nor as represented could the user profile database store a cluster of viewing sessions), but instead table of user preferences. Furthermore, updating user preference information (e.g., the database) is not the same as clustering viewing sessions. Thus, the mere fact that the user profile database 800 in Williams categorizes or identifies programs according to genre has nothing to do with actually clustering viewing sessions of a user. The user profile database 800 in Williams simply identifies which type of programs a particular user prefers.

Second, and perhaps more importantly, the programs in the profile database 800 of Williams are not “viewing sessions”. There is simply no basis for such a reading of Williams. Williams teaches monitoring user interactions with the system and storing those interactions in a behavior log (column 9, lines 23-27). Williams then compares data in the behavior log (as well as current system settings) with preference information from the profile database 800 (column 9, lines 27-31), to determine which user is currently using the system (column 5, lines 35-38).

Independent claim 1 recites “monitoring a plurality of viewing sessions...clustering the plurality of viewing sessions...” Viewing sessions naturally include a history of channels viewed, volume levels, channel dwell time, and other similar user interactions or activity that occurs over any given length of time of viewing. In claim 1, the viewing sessions are then clustered based on a common identifier. However, Williams says nothing pertaining to clustering sessions of user viewing. The mere fact that the profile database 800 includes an indication of which *programs* a particular user *prefers* has nothing whatsoever to do with interactions made by the viewer during any particular viewing session which is then clustered with other viewing sessions. Moreover, it is possible that a user may not even observe a program during any such viewing session. As such, Williams cannot be said to teach or suggest the monitoring and/or clustering of “viewing sessions”, as recited in independent claim1.

Finally, as explained at pages 11 – 12 of Applicants’ Amendment, Williams does not teach or suggest that, “the clustering occurs independently of subscriber characteristics”

established prior to the monitoring of” the viewing sessions. This is because Williams requires there to be subscriber characteristics already entered into the system. Williams cannot determine users without this pre-entered data for “known system users,” and requires preexisting knowledge of the users that will be interacting with the system so that there is a starting point for determining the user. The clustering of viewing sessions, as recited in claim 1, allows the user to be determined without the need for such pre-entered data.

Accordingly, even in view of the Examiner’s taking of Official Notice (discussed below), the proposed combination of Williams and Official Notice does not teach or suggest all aspects of independent claim 1. Thus, claim 1 is believed to be allowable over Williams and/or the Examiner’s Official Notice.

As explained in Applicants’ Amendment, independent claims 15, 16 and 23 are believed to be allowable over Williams for at least reasons similar to those discussed with respect to independent claim 1. Dependent claims 2-4 and 17-22 are believed to be allowable at least by their dependence on claims 1 and 16, respectively.

### ***Taking of Official Notice***

In the Final Action, the Examiner acknowledged that Williams does not teach or suggest the “subscriber being identified independently of subscriber characteristics established prior to the monitoring step.” (Final Action, page 3). Nonetheless, in support of the obviousness rejection, the Examiner takes Official Notice that “it is old and well known in marketing and the like to identify demographic information of who is currently watching a TV program without having prior information on the viewers in order to broadcast programs or commercial to a large audience.” However, Applicants disagree that there are “facts outside of the record which are capable of instant and unquestionable demonstration as being ‘well-known’ in the art,” as required by M.P.E.P. §2144.03, which would support an Examiner’s finding of Official Notice.

Applicants respectfully traverse the Examiner’s taking of Official Notice, and respectfully request that the Examiner support the taking of Official Notice by producing a

relevant reference that shows/teaches this claimed feature, and that the Examiner identify a specific teaching in the reference to support a combination with Williams.

***Conclusion***

Applicants respectfully submit that the Examiner's rejections have been previously overcome, and that the application, including claims 1-4 and 15-23, is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejections and a Notice of Allowance are respectfully requested.